

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-o81194
	:	TRIAL NO. o8CRB-19676
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
JOSHUA K. KATZ,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Following a bench trial, defendant-appellant Joshua Katz was found guilty of disorderly conduct. The trial court sentenced him to a \$200 fine, plus costs. This appeal followed.

Around midnight one evening, Katz flagged down Cincinnati Police Officer Thomas Findlay as Findlay was driving by Katz's fraternity house. The fraternity was hosting a large party, and Katz asked Findlay for help in escorting a woman from the fraternity-house grounds. The woman, however, told Findlay that Katz had assaulted her. As Findlay attempted to assess the situation, Katz interrupted him several times. Findlay testified that Katz was acting in an agitated manner, and that he had to repeatedly ask Katz to calm down. But Katz continued to interrupt Findlay's

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

investigation, screaming that the woman was not telling the truth.

Cincinnati Police Sergeant Patrick Caton arrived at the scene after Findlay. Caton testified that there were approximately 200 to 300 partygoers present, but that his attention was immediately drawn to Katz. He heard Katz shouting “[G]o back in the house! Go back in the house! Go back in the fucking house!” He also heard Katz, who had a permit to carry a concealed weapon, arguing with several officers who had taken Katz’s gun from him. Caton saw three police officers telling Katz to calm down and then heard Katz shout to one of the officers, “You can’t take my gun! You can’t take my gun!” As Caton approached Katz to inform him that the police could, indeed, take his weapon, Katz screamed to a bystander, “[G]et back in the fucking house!” He also screamed at Caton, “You’re making furtive movements towards me!”

Caton testified that, as Katz was yelling, more and more people started gathering around him. According to Caton, many of the bystanders appeared “highly intoxicated,” including a number of Katz’s fraternity brothers who were showing support for Katz. Four or five police officers had to stand between Katz and the crowd to help keep order. Caton testified that these officers had to “basically surround us [the officers] as we were dealing with Mr. Katz and contain the crowd and push them back up the sidewalk.”

Based on these events, Katz was arrested for disorderly conduct.

Katz called two of his fraternity brothers, Jordan McCrate and Nathan Dumtschin, to testify in his defense at trial. Both witnesses had been at the party. McCrate testified that Katz had not been disruptive. But McCrate also admitted that he had not been outside the entire time that the police had been there. Dumtschin

testified that it had been too noisy to hear much of anything that Katz had been saying.

In his sole assignment of error challenging his conviction, Katz presents three arguments: (1) that the state failed to establish the elements of disorderly conduct beyond a reasonable doubt, (2) that his conviction was against the manifest weight of the evidence, and (3) that the trial court abused its discretion in sentencing him. None of these arguments has merit.

Katz was convicted of violating R.C. 2917.11(A)(5), which provides, “No person shall recklessly cause inconvenience, annoyance, or alarm to another by * * * [c]reating a condition * * * that presents a risk of physical harm to persons or property, by any act that serves no lawful and reasonable purpose of the offender.”

The state proved these elements beyond a reasonable doubt. Katz had been agitated from the time that police had arrived. He had been warned multiple times to calm down. As Katz screamed about his gun, more people—many of them highly intoxicated—gathered closer to Katz to see what was happening. Some were his friends. Four or five police officers had to form a barrier between Katz and the crowd and had to push the crowd back and away from Katz. Members of the crowd were supportive of Katz. Viewing this evidence in a light most favorable to the state,² we hold that there was sufficient evidence to support a conviction for disorderly conduct.³

² *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

³ Cf. *State v. Fant* (1992), 79 Ohio App.3d 458, 607 N.E.2d 548; *State v. Callahan* (1989), 48 Ohio App.3d 306, 549 N.E.2d 1230.

Katz contends that he was punished for speaking, presumably in violation of his First Amendment rights. But words that create a risk of imminent violence are not protected speech.⁴

In sum, Katz's conviction was supported by sufficient evidence.

His conviction was also not against the weight of the evidence. While Katz's witnesses testified that Katz had not been disruptive, there is nothing in the record to suggest that the trial court "so lost its way" in choosing to believe the state's version of the events that a new trial would be warranted.⁵

Finally, we hold that the trial court did not abuse its discretion in sentencing Katz. There is no indication in the record that the court failed to consider the applicable statutory sentencing factors, and the court imposed a sentence within the statutory range.⁶

We therefore overrule Katz's assignment of error.

The judgment of the trial court is affirmed.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., SUNDERMANN AND CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on September 16, 2009

per order of the Court _____.
Presiding Judge

⁴ See *State v. Hoffman* (1979), 57 Ohio St.2d 129, 387 N.E.2d 239; *Fant*, supra; *Callahan*, supra.

⁵ *State v. Thompson*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541; *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

⁶ See *State v. Nelson*, 172 Ohio App.3d 419, 2007-Ohio-3459, 875 N.E.2d 137; R.C. 2929.28.